

April 12, 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of R. Sandeman, D. Chandler,  
A. Duncan, and P. Hay

Confirmation No. 2666

Application No. 10/674,196

Group No. 1625

Filed September 29, 2003

Examiner: E. Price

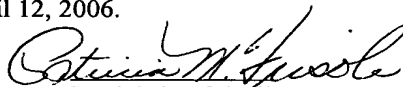
Insecticide and Method of Controlling Insects

(Attorney Docket No. P 27,299 USA)

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on Wednesday, April 12, 2006.

  
Patricia M. Frisoli

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Commissioner for Patents  
P.O. Box 1450  
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REQUEST UNDER 37 CFR §1.143 FOR RECONSIDERATION  
OF THE EXAMINER'S OCTOBER 12, 2005 REQUIREMENT FOR RESTRICTION

Sir:

The present Request is being submitted in response to the Examiner's  
October 12, 2005 Requirement for Restriction.

The Examiner's Requirement addresses only Claims 1 to 27. These claims were cancelled in a September 29, 2003 Preliminary Amendment and replaced by Claims 28 to 55. During a telephone conference with the Examiner on April 6, 2006, the Examiner advised that the Requirement should be interpreted instead as requiring applicants to elect one of the following groups: (I) Claims 28 to 48, 54, and 55, drawn to an insecticide compound; (II) Claims 49 to 52, drawn to methods for using such a compound; and (III) Claim 53, drawn to a method for making such a compound.

Applicants elect, with traverse, the Group I claims.

Traversal of the Examiner's Requirement is based on the fact that the Examiner has failed to show that the claims of Groups II and III are independent of those of Group I. As stated in 35 U.S.C. §121 two or more claims groups must be "independent and distinct" (emphasis added) in order for a Requirement for Restriction to be issued. While the MPEP's guidelines state that a Requirement for Restriction may be issued if two or more claim groups are shown to be independent or distinct, this is clearly contrary to what has been codified in the law (35 U.S.C. §121) and the MPEP's Guidelines do not supercede the law.

Applicants submit that the claims of Groups II and III are not independent of those of Group I. "Independent" means that there is no disclosed relationship between the subjects claimed. MPEP §802.01. In the present instance, there is clearly a disclosed relationship between the claims of Group I, which relate to insecticide compounds, the claims of Group II, which relate to methods for using the same, and the claim of Group III, which relate to a method for making such a compound. Specifically, the embodiments defined by the claim groups are related

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Group No. 1621

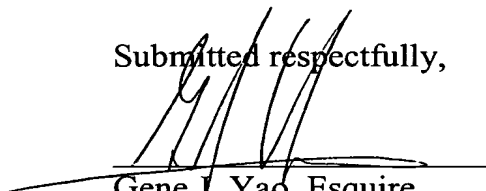
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as compound, method for making said compound, and methods for using said compound. The Examiner has not disputed this and has, in fact, recognized this relationship. Given the above, applicants traverse respectfully the Examiner's Requirement for Restriction and request that it be withdrawn.

In addition to his Requirement for Restriction, the Examiner has also required applicants to provisionally elect a species of the compound defined by the claims of Group I to which the claims shall be restricted should no generic claim be found finally allowable. Accordingly, applicants elect the species of the insecticide which comprises a compound which is N-phosphonomethyl valine or a salt thereof. Claims 28 to 30, 32, 34 to 37, and 39 to 55 are readable on this species.

An early and favorable Action is requested respectfully.

Submitted respectfully,



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